

// 1 //

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

S.B. Civil First Appeal No.748/2007

Shaitan S/o Mewa & Others
...Plaintiff-Appellant
Versus

Ajmer Vidyut Vitran Nigam Limited
through its Chairman, Ajmer & 2 Others
...Defendant-Respondents

Date of Judgment ::: 07th December, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri Jai Prakash Gupta, Counsel for the
plaintiff/appellants

//Reportable//

By the Court:-

Heard learned counsel for the appellants.

This appeal, on behalf of the plaintiffs, under Section 96 of the Code of Civil Procedure, is directed against the judgment and order dated 16.11.2006 passed by the Additional District Judge (Fast Track) No.2, Ajmer, Camp at Beawar, in Civil Suit No.112/2005 (219/2004), whereby the learned trial court dismissed the suit of the plaintiffs for compensation under the provisions of Fatal Accidents Act, 1855 (hereinafter shall be referred to as 'the Act, 1855').

Briefly stated the facts of the case are that

plaintiffs-appellants filed a suit for compensation on 24.2.2004 under the provisions of the Act, 1855, against the defendants in the trial court, wherein it was pleaded that the defendant No.3 Chhotu Singh S/o Gheesa Singh had an electricity connection at his well from the defendants No.1 and 2. In the night of 17.03.2000, one Mangi Lal went to the well of defendant No.3 to bring water therefrom in his tanker, and there he received electric-shock and died. It was also pleaded that the incident took place because of negligence on the part of the employees of defendants No.1 and 2. A First Information Report No.46/2000 was also lodged at Police Station Bhinaya. The police, after completion of investigation, filed a challan against defendant No.3. At the time of his death, the deceased was 25 years of age and was a skilled driver earning Rs.4000/- per month with daily allowance of Rs.50/-. The plaintiffs No.1 and 2 are parents and plaintiff No.3 is younger minor brother of deceased. The plaintiffs claimed total compensation of twenty-two lacs with interest at the rate of 18% per annum.

The defendants No.1 and 2 filed their written-statement pleading therein that the defendant No.3 did not apply for electricity-connection and he had an illegal electricity-connection at his well and, therefore, the defendants No.1 and 2 cannot be held responsible for the

alleged accident causing death of Mangi Lal. The defendants also raised a plea that the trial court has no jurisdiction to entertain and try the suit. It was also prayed that the suit is barred by limitation and the same is liable to be dismissed.

The defendant No.3 also filed his written-statement and pleaded that deceased Mangi Lal and Roop Chand had gone to his well to fetch water in their tanker/tractor illegally and the deceased died due to his own negligence. Thus, the suit of the plaintiffs is liable to be dismissed.

The trial court framed nine issues. The plaintiff examined PW-1 Shaitan and also produced documentary evidence Exhibit-1 to Exhibit-10. The defendants examined DW-1 Subbe Singh Rao.

The learned trial court, while deciding Issue No.6, recorded a finding that the incident took place on 17.03.2000 and the plaintiffs filed the suit on 24.02.2004 i.e. after the delay of three-year-and-eleven-month whereas, as per Article 82 of the Part VI of the Schedule appended to the Limitation Act, 1963 (for short, 'the Act, 1963') the limitation prescribed for compensation under the Act, 1855 is only 2 years, therefore, the suit was barred by limitation and thus decided the said issue against the plaintiffs. The trial court also decided the other issues, but, in view of the finding in respect of Issue No.6, the

trial court dismissed the suit of the plaintiffs being barred by limitation. Hence the plaintiffs have preferred this appeal.

The only contention of Shri Jai Prakash Gupta, the learned counsel for the appellants, is that the present matter is for compensation for the death of Mangi Lal, who died due to electric-shock and the trial court rejected the suit on the ground of limitation, which is not proper and justified in the eyes of law. He contended that earlier there was a period prescribed for limitation under the provisions of Motor Vehicles Act for filing an application for compensation in respect of accident arising out of motor vehicle, but subsequently the Parliament, in its wisdom, deleted the provisions prescribing limitation for filing application for compensation in respect of accident arising out of motor vehicle, therefore, the same analogy may be drawn in the present case relating to compensation under the provisions of the Act, 1855. He, therefore, contended that the impugned judgment passed by the trial court be set-aside and the case be remanded back to the trial court for decision on merits.

I have considered the submissions of learned counsel for the appellants and examined the impugned judgment passed by the trial court.

The learned counsel for the appellants does not

dispute the factual aspect of the matter that the deceased Mangi Lal died on 17.03.2000 due to electric-shock, and present suit for compensation was filed by the appellants in the trial court on 24.02.2004 i.e. after a delay of about three-year-and-eleven-month, under the provisions of the Act, 1855. The learned counsel for the appellants also does not dispute that for such a suit specific period of limitation is prescribed under Article 82 of the Part VI of the Schedule appended to the Limitation Act, 1963, according to which the period of limitation for filing the suit is two years from the date of death. The only submission of learned counsel for the appellants is that the limitation prescribed for the suit for compensation under the provisions of the Act, 1855 should be ignored by the courts as the period of limitation prescribed for filing application for compensation under the provisions of Motor Vehicles Act has been deleted by the Parliament and the same analogy be drawn in the present case also.

For ready reference, Article 82 of Chapter VI of the Schedule appended to the Limitation Act, 1963, is reproduced as under:-

<i>Description of Suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<i>82 By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855 (13 of 1855)</i>	<i>Two years</i>	<i>The date of the death of the person killed.</i>

The above article makes it clear that there is a specific period of limitation prescribed for filing a suit for compensation under the provisions of the Act, 1855, and it is two years from the date of the death of the person killed.

The contention of the learned counsel for the appellants to apply the same analogy of Motor Vehicles Act cannot be accepted in the present case for the simple reason that earlier there was a specific period of limitation prescribed even under the provisions of the Motor Vehicles Act, 1988, but subsequently the Parliament amended the provisions of the Motor Vehicles Act, 1988 and deleted the provision relating to the period of limitation for filing the application for compensation.

So far as the applications for compensation under the provisions of the Fatal Accidents Act, 1855, is concerned, Article 82 of Part VI of the Schedule attached to the Limitation Act, 1963, is there and the same is still in existence and cannot be ignored or deemed to have been deleted by the Courts, as contended by the learned counsel for the appellants.

The powers relating to enactment or amendment of law vest with the legislature. The primary function of the judiciary is to interpret the provisions of law. Though, the courts may lay down principles, guidelines and exhibit

creativity in the field left open and unoccupied by the legislation. Courts can interpret the law, and can remove apparent lacunae and fill the gaps, but cannot entrench upon in the field of legislation properly meant for the legislature.

The facts of delay in filing the present suit and the prescribing period of limitation under the law for its filing have not been disputed by the learned counsel for the appellants also.

I have examined the finding of the trial court in respect of Issue No.6. The position of facts and law, both, are not in dispute in the present case and I do not find any illegality in the finding of the trial court in respect of Issue No.6. In view of the above, the contention of the learned counsel for the appellants cannot be accepted, hence rejected.

The appeal, being devoid of any merit, is liable to be dismissed and the same is hereby dismissed in limine.

(Narendra Kumar Jain) J.